

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WENDY GAUTHIER,

Plaintiff,

v.

SUNHEALTH SPECIALTY SERVICES,
INC. and SUNBRIDGE HEALTHCARE
CORPORATION,

Defendants.

Civil Action No.: 4:05-cv-40119

**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EVIDENCE RELATED TO
OTHER EMPLOYEE WHO IS NOT COMPARABLE TO THE PLAINTIFF**

The Plaintiff has indicated that she will offer documents from the employee files of other CNAs. The Defendants agree that files related to attendance issue of other employees and the disciplinary action taken in regard to those attendance issues are relevant to this litigation. One of the employee files the Plaintiff indicates that she will offer into evidence includes disciplinary issues unrelated to attendance and therefore is not relevant to this matter. Employee No. 9 was disciplined for issues related to alcohol abuse and for having an unprofessional attitude at work. *See Exhibit A.*¹

Particularly inflammatory are references to Employee No. 9 lying in a patient's bed while having a strong smell of alcohol. Following this incident the employee refused alcohol testing and the employee quit the position. This incident and the earlier incidents involving Employee

¹ In order to preserve the privacy of the other employee's whose files have been produced in discovery, their names and personal information was redacted.

No. 9 using vulgar language are not relevant to the claims in this matter and their prejudicial impact far out ways any minor probative value this employee's file could offer.

Therefore, the Plaintiff should be precluded from offering documents related to Employee No. 9.

Dated: August 27, 2008

Respectfully Submitted,

**SunHealth Specialty Services, Inc., and
SunBridge Healthcare Corporation,**

by its attorney,

/s/ Michael Williams

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CERTIFICATE OF SERVICE

I hereby certify that this Document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 27, 2008.

/s/ Michael Williams

PERFORMANCE IMPROVEMENT PLAN

Name [REDACTED] Job Title CNA Facility Sunderwood

Nature of Concern: ☐ Absenteeism ☐ Dress Code ☐ Behavior ☐ Performance
☐ Tardiness ☐ Other (describe) _____

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: _____

Specific Description of Issue, Situation or Behavior (what, where, how): _____

irradict behavior - lying in bed & pt - "consoling pt"
 strong smell of alcohol on breath - eyes very
 glassy - J. Latorre RN Employee refused alcohol testing
 offer of employee assistance. Employee chose to leave of
 her own accord.

Immediate and Continued Change Needed for Success: _____

This is a repeat Behavior of Nov. 21 - Behavior
 inappropriate + strong odor of alcohol - Unsteady on her feet
 + while moving Breakfast cart - crashed into wall + then walked
 away.

Action Taken ☐ Documented Verbal Notice ☒ Suspension for 1 days to start on
☐ Written Notice (Date) 12/1/03 and return to work on
☐ Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: _____

J. Latorre RN 12-1-03
 Supervisor's Signature Date

Employee's Signature Date
☒ Employee Refused to Sign - Requires Witness Signature

Don Kendall MS
 Dept. Head/Administrator Date

Witness Signature Date

Copy to Personnel File (White)

Employee (Canary)

Supervisor (Pink)

EMPLOYEE COUNSELING FORMDATE: 8/20/96EMPLOYEE: [REDACTED]**PROBLEM:**

[REDACTED] came in late & then became upset when she wasn't allowed to skip rounds & start her assignment right away but was asked to do residents that needed to be done before breakfast. [REDACTED] became upset & angry & worked verbal comments made back & forth. [REDACTED] upset & thinks her assignment is too heavy but she had 4 completed, 4 set up & 1 more. Although yesterday she just did one of them for her.

STATEMENT BY EMPLOYEE:

(EEOC)
Counselor Refused to sign & denied all
[REDACTED]

RESOLUTION OF PROBLEM OR ACTION TAKEN:

getting to work on time & working as a team
or suspension possible

Marilyn Macomber
Signature of Staff Member

8/20/96
Date

[REDACTED]
Signature of Employee


Date

EMPLOYEE COUNSELING FORMDATE: September 21, 1997EMPLOYEE: PROBLEM: unprofessionalism - patient safety

Came on duty very argumentative, upset about not having a partner, yelling & arguing at yourself & others stating you were going to quit - an argument between you & another aide took place in a hallway, upsetting to residents, attempts to stop argument failed, you continue to be upset most of day - language became foul & offensive

STATEMENT BY EMPLOYEE:

RESOLUTION OF PROBLEM OR ACTION TAKEN:

attempts to tell you to calm down failed - stopping would be complete - failed  you were way out of control you were loud, scaring people. This time you spent arguing someone could have choked or fallen - you forget your responsibilities - We could solve this by coming to me, find it if it happens again - I would have to send you home to cool off.

Diana - Anna Riccio 9/22/97

Signature of Staff Member

Date

Signature of Employee

Date

EMPLOYEE COUNSELING FORMDATE: 11-20-98EMPLOYEE: 


PROBLEM:

resident behavior -
 while working to know residents who are behavior
 problems he aware. Even though you had no warning
 of this behavior, in future watch for facial expression
 rigidity of body, speaking out.

STATEMENT BY EMPLOYEE:


The nurse and I talked this
over and will take more notice.

RESOLUTION OF PROBLEM OR ACTION TAKEN:

 I have gone over what to do with certain
 behavior problems & how to read a persons
 expression, & how to save yourself from being
 hurt by resident.

Ann Reichen
 Signature of Staff Member

11/20/98
 Date


 Signature of Employee

Date

PERFORMANCE IMPROVEMENT PLAN

Name [REDACTED] Job Title CNA Facility Sordalwood

Nature of Concern: ☐ Absenteeism ☐ Dress Code ☒ Behavior ☐ Performance
☐ Tardiness ☒ Other (describe) inappropriate conduct

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: November 28, 1998

Specific Description of Issue, Situation or Behavior (what, where, how): on searching out clothes in laundry dept. began using vulgar language becoming upset and losing control. Behavior cont. upsta in hallway in hearing distance of residents. This behavior influenced + effected mood of other employees.

Immediate and Continued Change Needed for Success: Spoke to employee, cautioned: (think about what she is going to say, + express it in more appropriate ways). More calm behavior needed.

Action Taken ☐ Documented Verbal Notice ☐ Suspension for _____ days to start on _____
☒ Written Notice (Date) _____ and return to work on _____
☐ Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: _____

Debra Ann Rice 12/3/98
 Supervisor's Signature Date

[REDACTED] 12/3/98
 Employee's Signature Date

☒ Employee Refused to Sign - Requires Witness Signature
Comment

Joe Satom 12/3/98
 Dept. Head/Administrator Date

 Witness Signature Date

Copy to Personnel File (White)

Employee (Canary)

Supervisor (Pink)

PERFORMANCE IMPROVEMENT PLANName [REDACTED] Job Title CNA Facility SandalwoodNature of Concern: ☐ Absenteeism ☐ Dress Code ☐ Behavior ☐ Performance
☐ Tardiness ☒ Other (describe) following policy.

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: 12/4/98

Specific Description of Issue, Situation or Behavior (what, where, how): _____

If any injury occurs at work you need to report it to your
charge nurse immediately to ensure that you
receive the proper tx.

Immediate and Continued Change Needed for Success: Not following policy re: employee
injury could lead to delay in tx & delay in healing time
& could lead to disciplinary actions.
Need to attend an seminar on body mechanics & SDC.

Action Taken ☐ Documented Verbal Notice ☐ Suspension for _____ days to start on _____
☒ Written Notice (Date) _____ and return to work on _____
☐ Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: sorry, but I don't know if it
happen at work or not. So that is why
I didn't report it.Supervisor's Signature Jui Laine M Date 12-8-98Employee's Signature [REDACTED] Date _____
☐ Employee Refused to Sign - Requires Witness Signature

Dept. Head/Administrator _____ Date _____ Witness Signature _____ Date _____